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SENATE BILL DRS35357-MHa-189A (05/04)

Short Title: Encourage Marine Aquaculture.

(Public)

Sponsors: Senators Cook, Sanderson, and Tillman (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE AND FUND A PROGRAM FOR THE PERMITTING OF MARINE
AQUACULTURE ACTIVITIES IN THE DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES AND TO REQUIRE THE DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES AND THE DIVISION OF MARINE FISHERIES OF THE
DEPARTMENT OF ENVIRONMENTAL QUALITY TO JOINTLY REQUEST THE
ISSUANCE OF FEDERAL RULES TO ALLOW MARINE AQUACULTURE IN FEDERAL
WATERS OFF THE COAST OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-758 reads as rewritten:

"§ 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as used in this ~~Article~~, Article:

- (1) "~~Aquaculture~~" ~~means the~~ Aquaculture. – The propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching, ranching, marine hatcheries, and other deepwater fish farming operations in the coastal and ocean waters of the State.
- (2) "~~Aquaculture facility~~" ~~means any~~ Aquaculture facility. – Any land, structure or other appurtenance that is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, floating cage, or other equipment used in aquaculture; aquaculture.
- (3) "~~Aquatic species~~" ~~means any~~ Aquatic species. – Any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes" as defined in G.S. 113-129(7); G.S. 113-129(7).
- (4) "~~Commissioner~~" ~~means the~~ Commissioner. – The Commissioner of Agriculture; Agriculture.
- (5) "~~Department~~" ~~means the~~ Department. – The North Carolina Department of Agriculture and Consumer Services."

SECTION 2. G.S. 106-761 reads as rewritten:

"§ 106-761. Aquaculture facility registration and licensing.

(a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised ~~freshwater fish and freshwater crustacean species.~~ freshwater and saltwater fish and crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of ~~freshwater~~ freshwater and saltwater aquaculturally raised species. The Board may prescribe standards under



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1 which commercially reared fish may be transported, possessed, bought, and sold. The Department
2 and Board of Agriculture authority shall be limited to commercially reared fish and shall not
3 include authority over the wild fishery resource which is managed under the authority of the North
4 Carolina Wildlife Resources ~~Commission~~. Commission or the Marine Fisheries Commission. The
5 authority granted herein to regulate facilities licensed pursuant to this section does not authorize
6 the Department of Agriculture and Consumer Services or the Board of Agriculture to promulgate
7 rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such
8 facilities from the rules adopted by any other State agency.

9 ...

10 (c1) The Board of Agriculture shall by rule designate the species of fish, crustaceans, and
11 shellfish that may be produced and sold under a Marine Aquaculture Propagation and Production
12 Facility License as set forth in subsection (d1) of this section. The Board shall take into account all
13 of the following factors in its designation of species:

14 (1) The potential market for the species, both domestic and export.

15 (2) If the species is not native to State waters or is a genetically engineered variant
16 of a native species, the potential for genetic contamination of or undesired
17 interbreeding with wild stocks of the species.

18 (3) Whether public access and use of waters of the State would be unduly impacted
19 by the private leasing of public submerged lands and the superjacent water
20 column necessary to support propagation or production facilities for the species,
21 when compared to the potential economic impact of those facilities.

22 ...

23 (d1) Marine Aquaculture Propagation and Production Facility License. – The Board of
24 Agriculture may, by rule, authorize and license the operation of fish hatcheries and production
25 facilities for species of fish listed in subsection (c1) of this section. The Board shall (i) consult
26 with the Marine Fisheries Commission and the National Marine Fisheries Service regarding
27 appropriate measures to protect wild stocks from disease or genetic contamination and (ii) enter
28 into memoranda of agreement with the United States Army Corps of Engineers and any other
29 appropriate State or federal regulatory agencies regarding appropriate standards and markings for
30 marine aquaculture structures to avoid impairment of navigation. Marine aquaculture facilities that
31 require the use of public bottom lands underlying waters of the State or the superjacent water
32 column will also require a lease from the Department of Environment and Natural Resources
33 pursuant to Article 16A of Chapter 113 of the General Statutes. The Board may prescribe
34 standards of operation, qualifications of operators, and the conditions under which fish may be
35 commercially reared, transported, possessed, bought, and sold. Marine Aquaculture Propagation
36 and Production Licenses issued by the Department shall be valid for a period of five years.

37 (d2) Protection of Private Marine Aquaculture Rights. – It is unlawful for any person, other
38 than the holder of a Marine Aquaculture Propagation and Production Facility License and
39 associated lease under Article 16A of Chapter 113 of the General Statutes, to take or attempt to
40 take marine species being produced under the license and associated lease from any privately
41 leased, franchised, or deeded marine aquaculture operation without written authorization of the
42 holder and with actual knowledge it is a marine aquaculture leased area. Actual knowledge will be
43 presumed when the marine species are taken or attempted to be taken under the following
44 circumstances:

45 (1) From within the confines of posted boundaries of the area as identified by
46 signs, whether the whole or any part of the area is posted; or

47 (2) When the area has been regularly posted and identified and the person knew the
48 area to be the subject of private marine aquaculture rights.

49 A violation of this section shall constitute a Class A1 misdemeanor, which may include a fine of
50 not more than five thousand dollars (\$5,000). The written authorization shall include the lease
51 number or deed reference, name and address of authorized person, date of issuance, and date of

1 expiration, and it must be signed by the holder of the marine aquaculture rights. Identification
2 signs shall include the lease number or deed reference and the name of the holder.

3"

4 **SECTION 3.** Chapter 113 of the General Statutes is amended by adding a new Article
5 to read:

6 "Article 16A.

7 "Leasing of Bottom Land and Waters of the State for Marine Aquaculture.

8 **"§ 113-215. Legislative findings and declaration of policy.**

9 The General Assembly finds that development of a marine aquaculture industry in the State
10 provides increased seafood production and long-term economic and employment opportunities.
11 The General Assembly declares that it is the policy of the State to encourage the development of
12 private, commercial marine aquaculture in ways that are compatible with other public uses of
13 marine and estuarine resources such as navigation, fishing, and recreation.

14 **"§ 113-216. New leases for marine aquaculture.**

15 (a) To increase the use of suitable areas underlying coastal fishing waters for establishment
16 of marine aquaculture operations, the Secretary may grant marine aquaculture leases for the public
17 bottom under the terms of this section to persons who reside in North Carolina and who have
18 obtained a Marine Aquaculture Propagation and Production Facility License under Article 63 of
19 Chapter 106 of the General Statutes when the Secretary determines, in accordance with the
20 Secretary's duty to conserve the marine and estuarine resources of the State, that the public interest
21 will benefit from issuance of the lease. Suitable areas for marine aquaculture shall meet the
22 following minimum standards:

23 (1) The area leased must not contain a natural shellfish bed.

24 (2) The marine aquaculture operation in the leased area will be compatible with
25 lawful utilization by the public of other marine and estuarine resources. Other
26 public uses which may be considered include, but are not limited to, navigation,
27 fishing, and recreation.

28 (3) The operation of a marine aquaculture operation in the leased area will not
29 impinge upon the rights of riparian owners.

30 (4) The area leased must not include an area designated for inclusion in the
31 Department's Shellfish Management Program.

32 (5) The area leased must not include an area that the State Health Director has
33 recommended be closed to shellfish harvest by reason of pollution.

34 (b) The Secretary may delete any part of an area proposed for lease or may condition a
35 lease to protect the public interest with respect to the factors enumerated in subsection (a) of this
36 section. The Secretary may not grant a new lease in an area heavily used for recreational purposes.

37 (c) Any person desiring to apply for a lease must make written application to the Secretary
38 on forms prepared by the Department containing such information as deemed necessary to
39 determine the desirability of granting or not granting the lease requested. Except in the case of
40 renewal leases, the application must be accompanied by a map or diagram made at the expense of
41 the applicant, showing the area proposed to be leased.

42 (d) The map or diagram must conform to standards prescribed by the Secretary concerning
43 accuracy of map or diagram and the amount of detail that must be shown. If, on the basis of the
44 application information and map or diagram, the Secretary deems that granting the lease would
45 benefit the marine aquaculture industry of North Carolina, the Secretary must order an
46 investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary
47 or the Secretary's authorized agent to determine whether the area proposed to be leased is
48 consistent with the standards in subsection (a) of this section, with the terms of the Marine
49 Aquaculture Propagation and Production Facility License issued by the Department of Agriculture
50 and Consumer Services and any other applicable standards under this Article and the rules of the
51 Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with

1 the applicable standards, the Secretary shall deny the application or propose that a conditional
2 lease be issued that is consistent with the applicable standards. In the event the Secretary
3 authorizes amendment of the application, the applicant must furnish a new map or diagram
4 meeting requisite standards showing the area proposed to be leased under the amended
5 application. At the time of making an application for an initial lease, the applicant must pay a
6 filing fee of two hundred dollars (\$200.00).

7 (e) The area of bottom applied for must be as compact as possible, taking into
8 consideration the shape of the body of water, the consistency of the bottom, and the desirability of
9 separating the boundaries of a leasehold by a sufficient distance from any other marine
10 aquaculture operations or shellfish leases.

11 (f) Within a reasonable time after receipt of an application that complies with subsection
12 (d) of this section, the Secretary shall notify the applicant of the intended action on the lease
13 application. If the intended action is approval of the application as submitted, or approval with a
14 modification to which the applicant agrees, the Secretary shall conduct a public hearing in the
15 county where the proposed leasehold lies. The Secretary must publish at least two notices of the
16 intention to lease in a newspaper of general circulation in the county in which the proposed
17 leasehold lies. The first publication must precede the public hearing by more than 20 days; the
18 second publication must follow the first by seven to 11 days. The notice of intention to lease must
19 contain a sufficient description of the area of the proposed leasehold that its boundaries may be
20 established with reasonable ease and certainty and must also contain the date, hour, and place of
21 the hearing.

22 (g) After consideration of the public comment received and any additional investigations
23 the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or
24 by certified or registered mail of the decision on the lease application. The Secretary shall also
25 notify persons who submitted comments at the public hearing and requested notice of the lease
26 decision. An applicant who is dissatisfied with the Secretary's decision or another person
27 aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23
28 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's
29 decision is a modification to which the applicant agrees, the lease applicant must furnish an
30 amended map or diagram before the lease can be issued by the Secretary.

31 (h) After a lease application is approved by the Secretary, the applicant shall submit to the
32 Secretary information sufficient to define the bounds of the area approved for leasing with markers
33 in accordance with the rules of the Commission. The information shall conform to standards
34 prescribed by the Secretary concerning accuracy of survey and the amount of detail to be shown.
35 When information is submitted, the boundaries are marked and all fees and rents due in advance
36 are paid, the Secretary shall execute the lease on forms approved by the Attorney General. The
37 Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing the
38 area under lease or by combining contiguous leases without increasing the total area leased.

39 (i) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon
40 on the first day of July following the 10th anniversary of the granting of the lease. Renewal leases
41 are issued for a period of 10 years from the time of expiration of the previous lease. At the time of
42 making application for renewal of a lease, the applicant must pay a filing fee of one hundred
43 dollars (\$100.00). The rental for initial leases is ten dollars (\$10.00) per acre, per year. Rental
44 must be paid annually in advance prior to the first day of April each year. Upon initial granting of
45 a lease, the pro rata amount for the portion of the year left until the first day of July must be paid
46 in advance at the rate of ten dollars (\$10.00) per acre per year; then, on or before the first day of
47 April next, the lessee must pay the rental for the next full year.

48 (j) Except as restricted by this Subchapter, leaseholds granted under this section are to be
49 treated as if they were real property and are subject to all laws relating to taxation, sale, devise,
50 inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases
51 properly acknowledged and probated are eligible for recordation in the same manner as

1 instruments conveying an estate in real property. Within 30 days after transfer of beneficial
2 ownership of all or any portion of or interest in a leasehold to another, the new owner must notify
3 the Secretary of such fact. Such transfer is not valid until notice is furnished to the Secretary. In
4 the event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the
5 lease.

6 (k) Upon receipt of notice by the Secretary of any of the following occurrences, the
7 Secretary must commence action to terminate the leasehold:

8 (1) Failure to pay the annual rent in advance.

9 (2) Failure to file information required by the Secretary upon annual remittance of
10 rental or filing false information on the form required to accompany the annual
11 remittance of rental.

12 (3) Failure by new owner to report a transfer of beneficial ownership of all, or any
13 portion of, or interest in the leasehold.

14 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
15 required in the rules of the Marine Fisheries Commission.

16 (5) Failure to utilize the leasehold on a continuing basis for marine aquaculture
17 purposes.

18 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
19 nonresident.

20 (7) Substantial breach of compliance with the provisions of this Article, of the
21 Marine Aquaculture Propagation and Production Facility License issued under
22 Article 63 of Chapter 106 of the General Statutes, or of rules of the Marine
23 Fisheries Commission governing use of the leasehold.

24 (l) In the event the leaseholder takes steps within 30 days to remedy the situation upon
25 which the notice of intention to terminate was based, and the Secretary is satisfied that
26 continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary
27 may discontinue termination procedures. Where there is no discontinuance of termination
28 procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23
29 within 30 days of receipt of notice of intention to terminate. Where the leaseholder does not
30 initiate a contested case, or the final decision upholds termination, the Secretary must send a final
31 letter of termination to the leaseholder. The final letter of termination may not be mailed sooner
32 than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or
33 of the final agency decision, as appropriate. The lease is terminated effective at midnight on the
34 day the final notice of termination is served on the leaseholder. The final notice of termination
35 may not be issued pending hearing of a contested case initiated by the leaseholder.

36 Service of any notice required in this subsection may be accomplished by certified mail, return
37 receipt requested; personal service by any law enforcement officer; or upon the failure of these
38 two methods, publication. Service by publication shall be accomplished by publishing such
39 notices in a newspaper of general circulation within the county where the lease is located for at
40 least once a week for three successive weeks and by posting the notices on the Commission's Web
41 site. The format for notice by publication shall be approved by the Attorney General.

42 (m) Upon final termination of any leasehold, the bottom in question is thrown open to the
43 public for use in accordance with laws and rules governing use of public grounds generally.
44 Within 30 days of final termination of the leasehold, the former leaseholder shall remove all
45 abandoned markers denominating the area of the leasehold as a private bottom. The State may,
46 after 10 days' notice to the owner of the abandoned markers thereof, remove the abandoned
47 structure and have the area cleaned up. The cost of such removal and cleanup shall be payable by
48 the owner of the abandoned markers and the State may bring suit to recover the costs thereof.

49 (n) Every year between January 1 and February 15, the Secretary must mail to all
50 leaseholders a notice of the annual rental due and include forms designed by the Secretary for
51 determining the amount of harvest gathered. Such forms may contain other pertinent questions

1 relating to the utilization of the leasehold in the best interests of the aquaculture industry of the
2 State and must be executed and returned by the leaseholder with the payment of the leaseholder's
3 rental. Any leaseholder or the leaseholder's agent executing such forms for the leaseholder who
4 knowingly makes a false statement on such forms is guilty of a Class 1 misdemeanor.

5 **"§ 113-217. Lease of superjacent water column for marine aquaculture.**

6 (a) To increase the productivity of marine aquaculture leases issued under G.S. 113-216,
7 the Secretary may include in marine aquaculture leases issued under G.S. 113-216 provisions to
8 authorize use of the water column superjacent to the leased bottom under the terms of this section
9 when the Secretary determines the public interest will benefit from inclusion of water column
10 provisions.

11 (b) Suitable areas for the authorization of water column use shall meet all of the following
12 minimum standards:

- 13 (1) Aquaculture use of the leased area must not significantly impair navigation.
- 14 (2) The leased area must not be within a navigation channel marked or maintained
15 by a State or federal agency.
- 16 (3) The leased area must not be within an area traditionally used and available for
17 fishing or hunting activities incompatible with the activities proposed by the
18 leaseholder, such as trawling or seining.
- 19 (4) Aquaculture use of the leased area must not significantly interfere with the
20 exercise of riparian rights by adjacent property owners, including access to
21 navigation channels from piers or other means of access.
- 22 (5) Use of the superjacent water column is necessary for exercise of activities
23 permitted under the Marine Aquaculture Propagation and Production Facility
24 License granted by the Department of Agriculture and Consumer Services
25 under Article 63 of Chapter 106 of the General Statutes.
- 26 (6) Any additional standards, established by the Commission in duly adopted rules,
27 to protect the public interest in coastal fishing waters."

28 **SECTION 4.** G.S. 113-134.1 reads as rewritten:

29 **"§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean.**

30 The Marine Fisheries Commission is directed to exercise all regulatory authority over the
31 conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State
32 jurisdiction over the resources as now or hereafter ~~defined.~~ defined, provided that the Department
33 of Agriculture and Consumer Services shall exercise concurrent authority to the extent necessary
34 to effectuate the purposes of Article 63 of Chapter 106 of the General Statutes. In the case of
35 conflict between actions taken or regulations promulgated by either agency, as respects the
36 activities of the other, the Marine Fisheries Commission and the Department of Agriculture and
37 Consumer Services are empowered to make agreements concerning the harmonious settlement of
38 such conflict in the best interests of promoting marine aquacultural resources, when not
39 inconsistent with the conservation of the marine and estuarine resources of the State. Marine
40 fisheries inspectors may enforce these regulations and all other provisions of law applicable under
41 the authority granted in this section in the same manner and with the same powers elsewhere
42 granted them as enforcement officers."

43 **SECTION 5.** There is appropriated from the General Fund to the Department of
44 Agriculture and Consumer Services the sum of fifty thousand dollars (\$50,000) to implement the
45 Marine Aquaculture Propagation and Production Facility licensing program created by this act.

46 **SECTION 6.** The Department of Agriculture and Consumer Services and the Division
47 of Marine Fisheries of the Department of Environmental Quality shall jointly do the following:

- 48 (1) Request that the Mid-Atlantic and South Atlantic Fishery Management
49 Councils develop a Fishery Management Plan for regulating offshore
50 aquaculture in federal waters offshore from the North Carolina coast.

- 1 (2) Petition the National Oceanic and Atmospheric Administration to initiate
2 rule-making proceedings to implement a comprehensive regulatory program for
3 managing the development of an environmentally sound and economically
4 sustainable aquaculture fishery in federal waters offshore from the North
5 Carolina coast.

6 The Department and the Division shall provide an interim report to the Joint
7 Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later
8 than January 15, 2017, regarding their progress in implementing this section and a final report on
9 or before June 1, 2017, that includes the request and petition required by this section.

10 **SECTION 7.** The Division of Marine Fisheries shall review its Fishery Management
11 Plan for river herring (blueback herring, *Alosa aestivalis*, and alewife, *Alosa pseudoharengus*) and
12 report no later than December 15, 2016, to the Joint Legislative Oversight Committee on
13 Agriculture and Natural and Economic Resources regarding the continuing validity and scientific
14 basis for the continued status of both species as "overfished." If the Division does not have an
15 adequate scientific basis to review the status of both species, then the report should include cost
16 estimates for the restoration of spawning and nursery area surveys and age composition work for
17 all coastal streams within the State that historically contained significant river herring fisheries.

18 **SECTION 8.** Sections 1 through 4 of this act become effective October 1, 2016. The
19 remainder of this act is effective when it becomes law.